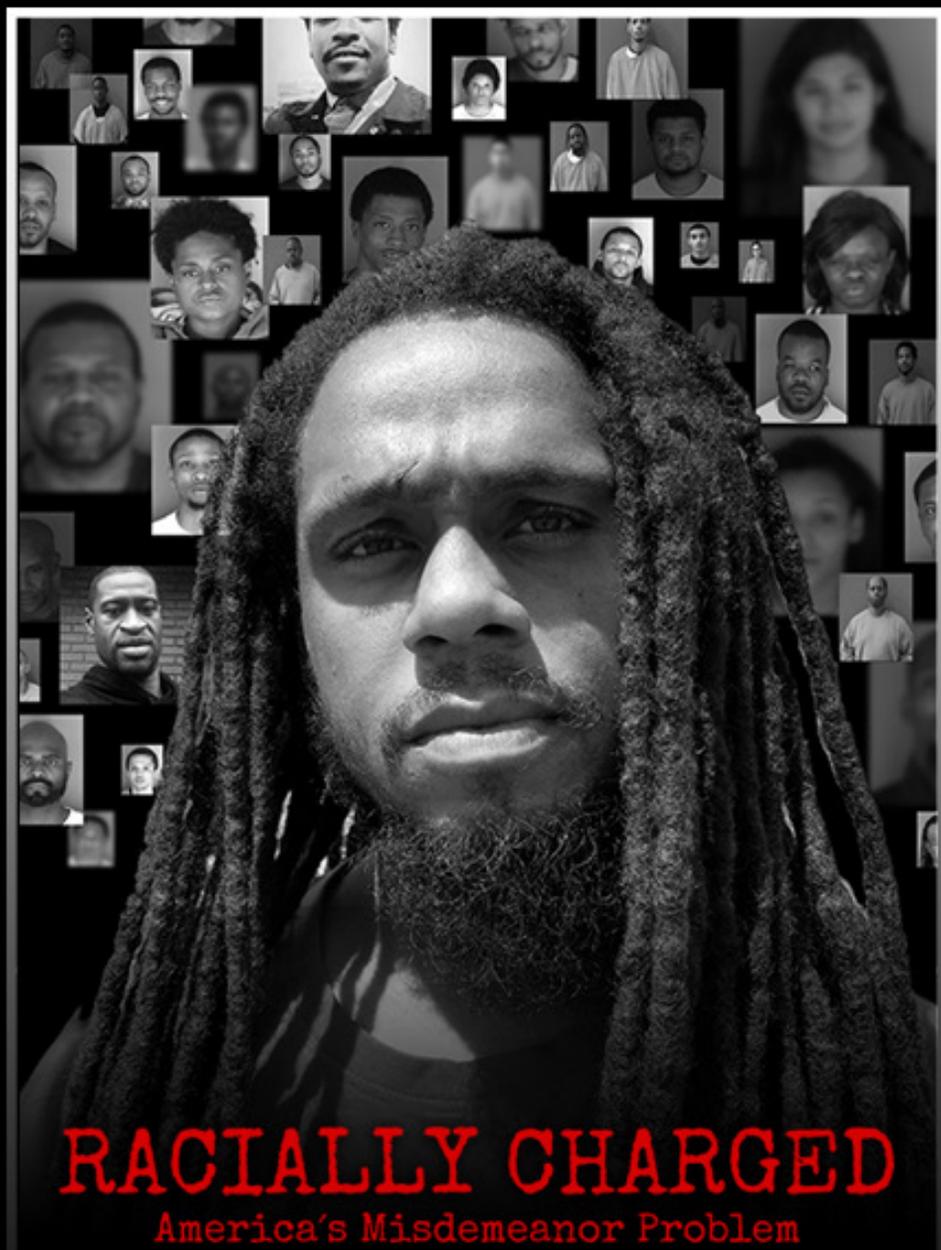
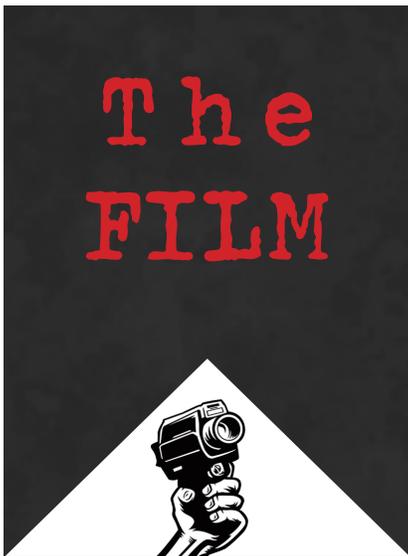




BRAVE NEW FILMS



Engagement • Discussion • Resource
GUIDE



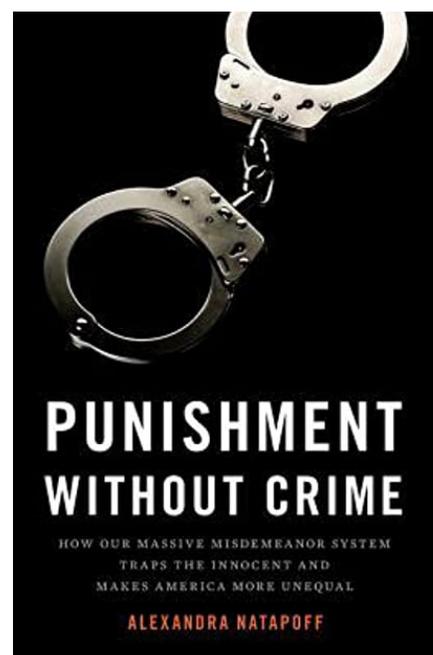
RACIALLY CHARGED: America's Misdemeanor Problem exposes how our country's history of racial injustice evolved into an enormous abuse of power within the justice system. 13 million people a year – most of them poor and people of color – are caught in this system.

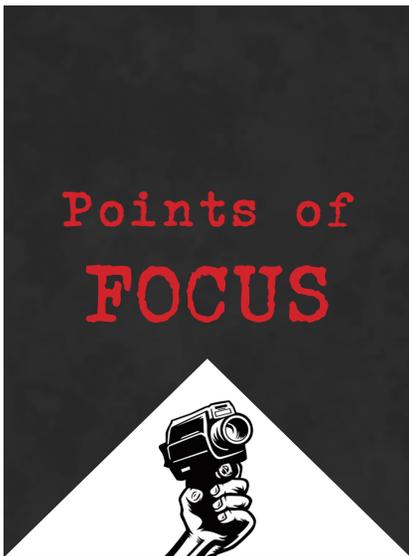
Told through parallel first-person accounts of those charged under the Black Codes of the Reconstruction Era, to the heartbreaking stories from people caught up in the system today, the film brings to light the unfolding of a powerful engine of inequality and profit that personifies the birth of Black Lives Matter while shedding new light on our history of wrongful convictions with deadly consequences.

In addition to the first-person accounts, the film showcases key analysis from experts in the fields of law, criminal justice, and historical racism.

FEATURING

- **Mahershala Ali** – 2-time Academy Award winner for *Moonlight* and *Green Book*
- **Demario Davis** – NFL linebacker for the New Orleans Saints
- **Alexandra Natapoff** – Author of the book, *Punishment Without Crime*, which serves as the inspiration for our documentary
- **Khalil Gibran Muhammad** – Professor at the Harvard Kennedy School and author of, *The Condemnation of Blackness*
- **Douglas Blackmon** – Pulitzer Prize winning author of the book, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*
- **Paul Delano Butler** – Law professor at Georgetown University Law Center and author of, *Chokehold: Policing Black Men*
- **Gaye Theresa Johnson** – Associate Professor of African American Studies at UCLA
- **Irene Oritseweyinmi Joe** – Professor of Law, UC Davis School of Law





NO MISDEMEANOR IS MINOR

The biggest misconception about misdemeanors is that they are minor. This could not be further from the truth. There are hundreds of thousands of misdemeanor laws. Every jurisdiction uses them to regulate all kinds of conduct but there are some that are clearly unfair and mostly skewed by wealth and by race. [SEE PAGE 3.](#)

LAWS PAST AND PRESENT

Many of the most problematic misdemeanors that we grapple with today have been around for hundreds of years, and in this country in particular, have a really sordid history. After the Civil War, Southern states repurposed their misdemeanor systems essentially to criminalize and control African-Americans. The mechanism that they used is one that we still see today. [SEE PAGE 4.](#)

PROFITS AND REVENUE

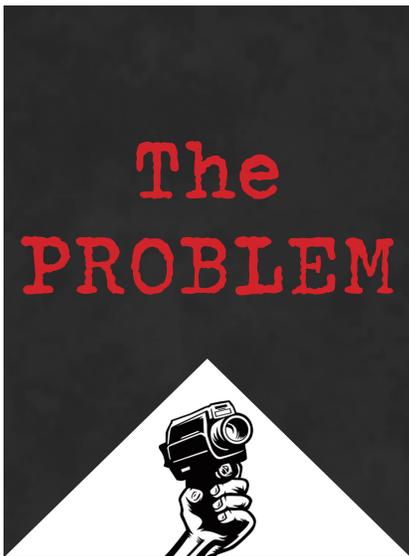
The business of misdemeanor criminal justice is an 80-billion dollar industry and it is not just going to private players. 90 cents of every one of those 80-billion dollars goes to a public institution – courts, prosecutors, publicly managed institutions, prison guards, wardens – feeding an entire economy (much the way slavery did). The economics incentivize us to be tough on crime. [SEE PAGE 5.](#)

THE RACIALIZATION OF CRIME

One of the things we are learning now is just how disproportionately low-level offenses that most people don't even think of as crimes are enforced against African-Americans and this becomes an entry into the criminal justice system that they may never break free from. Even more disturbing is the frequency in which these arrests turn violent, or deadly -- sparking protests and sometimes racial terrorism. [SEE PAGE 6.](#)

COVID-19 IN JAILS

Covid-19 requires Americans to think hard about what is unjust and disproportionate punishment. It is a question that ethicists have tried to tackle for millennia, but has been given added urgency during the pandemic as correctional facilities have become the nation's hot spots, not only due to the overcrowding but also because of the cycling in and out of jails for low-level misdemeanor charges. [SEE PAGE 7.](#)



In the misdemeanor system, there is no conduct too minor, no act too small, that the state cannot render a crime. There is a misconception that misdemeanors are minor, but there is nothing minor about a misdemeanor conviction that can dog a person for their lifetime, interfere with their with their education, with their housing, with their credit and with their ability to earn a living.

One category of misdemeanor offenses that most resemble the vagrancy laws of post-war South are defined as order maintenance offenses, because when police arrest people for this conduct, it's not because it's particularly harmful or particularly dangerous or these people are at all culpable or bad people. Police are keeping the order through these low-level offenses.

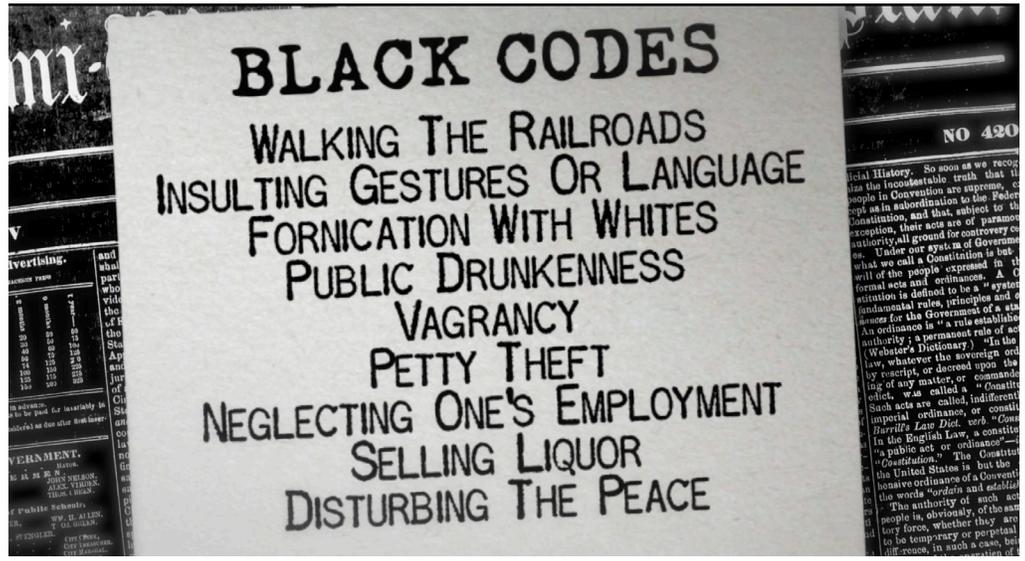
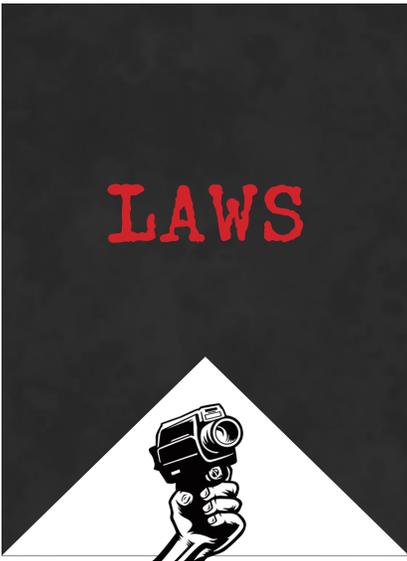
One of the most troubling misdemeanors that is gaining more attention is jaywalking. Most people don't think that we would treat this criminally or that it would be a way to pull someone into the criminal system. But we're seeing study after study in these cities that show that African-Americans and African-American communities are being cited for jaywalking at 3, 5, 10 times the rate of white pedestrians. It's particularly bitter and ironic because Michael Brown, who was the teenager who was killed by police in Ferguson and whose death led to the explosion of the Black Lives Matter movement and our public awareness... He was stopped for jaywalking. He stepped onto the street and there was an ordinance that made this a crime.

Everyday, over 730,000 people are incarcerated in our 3,000 jails. 60% (nearly half a million people are held pre-trial). Pre-trial detainees spend at least a month in jail before they are convicted of any crime; they are held either because they cannot afford bail or they decline to plead guilty.

3 out of 5 people in U.S. jails today have not been convicted of a crime, they cannot afford the bail but the incarceration will be a burden long after they are free.

Pre-trial detainees spend on average, a month in jail before they see a judge.

There are so many proceedings that once a trial is granted, they can last less than a minute.



PAST

After the civil war, and after abolition, Southern states repurposed their misdemeanor systems essentially to criminalize and control the African-American labor pool. They arrested them and charged them with minor crimes and punished them with fines that they could not pay in order to lock them up and then to effectively sell them back to private industry.

The mechanism that they used is one that we still see today, that that private industry acted as a surety.

Southern legislatures tried to re-inscribe a form of slavery through a system of laws called Black Codes. Those codes essentially tip the hand of the South with respect to how it's going to use the criminal justice system over the course of the next century, to coerce black people back to labor.

By creating laws that criminalize and create convictions for Blacks, then they were allowed to enslave them again through the practice of convict leasing. Which allowed plantation owners and in many cases, corporations, to lease people from the state government or county government that they were incarcerated in to do work for everything from coal mines, to plantations, lumber mills and railroad construction.

PRESENT

Today, loitering is a police tool of choice. It's the common go to offense that police often use to clear corners to impose their authority in a neighborhood, to get people to move along at 2 in the morning. Much of that authority is being deployed illegally. For example, in Baltimore statute says, it shall be the crime of loitering to interfere with or impede vehicular or pedestrian traffic. After having been warned to desist and having failed to desist. So, if we think about what that means. You realize to loiter, you have to do a lot; you have to get in the way of people on the sidewalk or on the street. And then a police officer has to tell you to knock it off and then you have to not knock it off. Yet for years, a disproportionate amount of Blacks in Baltimore are arrested for loitering where they're clearly not engaging in that behavior.

**In many cities
Blacks account
for 85-99% of
all jaywalking
arrests**

WALKING THE RAILROAD

VAGRANCY

JAYWALKING

LOITERING

PROFITS



More than 90% of every dollar represented in the 80-billion dollar system goes to a public institution, our public courts, our prosecutors' offices

Costs are broken down into two categories, one the fine for the offense, and the other is the vague catchall of fees. The following is a broad categorization of where this money goes:

- Municipal budgets
- Judges
- District attorneys
- Clerk offices
- Police transport
- Bail bondsmen

Common costs that the defendant must bear have nothing to do with the fine of the charge they are accused of include:

- Booking
- Trial and court costs
- Pay to stay (including pre-trial detention)
- Drug testing
- Electronic monitoring
- Probation
- Public defenders

Operations and personal necessities within the incarceration facilities make up millions of dollars worth of government contracts that exist solely to profit from criminal justice.

- Uniforms
- Laundry
- Restraints (handcuffs)
- Food Service, (trays and utensils)
- Locks and Keys
- Inmate Telecommunications

This cottage industry has its own conferences and expos specific to correctional business.

These costs most disproportionately affect people convicted of low-level offenses or people who are held pretrial and not yet convicted of anything, generating revenue and profit-sharing agreements that range up to 95% of the actual charges going back to the County.

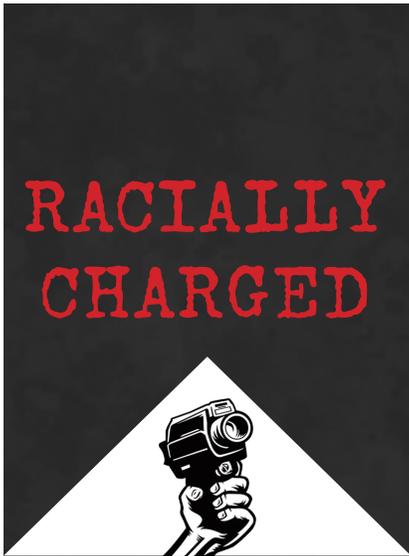
Those who cannot afford bail and fees see their costs go up by 500%

Person #1 - can pay right away		Person #2 - indigent	
-Fine	\$ 625	-Fine	\$ 625
-Restitution	\$ 30	-Restitution	\$ 30
-Court costs	\$ 180	-Court costs	\$ 180
-25% collection fee	\$ 209	-Indigent defense fee	\$1,200
		-Jail fees (\$70/day)	\$2,100
		-25% collection fee	\$1,034
-GRAND TOTAL	\$1,044	-GRAND TOTAL	\$5,169

The 50 cities with the highest proportion of revenue from fines and fees have populations comprised of 5 times more Blacks than the national average

10 million Americans owe more than \$50 billion in criminal justice debt

Examples: Benton County, Washington, 25% of those jailed for misdemeanors on a typical day is for nonpayment of fines and court fees. In Rhode Island, about 24 people a day are jailed for court debt.



HISTORICALLY

Racial violence against black people is not a temporary thing. It's not a wave. Throughout history, some of our nation's ugliest and most deadly racial massacres were sparked because of false charges of misdemeanor crimes that at the time were enforced by the law.

There's never been a moment in the history of the United States that hasn't been about racial violence and controlling people because of the color of their skin.

HEADLINES: NOTABLE RACIAL TERRORISM FOR MISDEMEANORS IN HISTORY AND TODAY

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| 1916 - Police Brutally Beat John Shobe as he walks home from work | 2014 - Police kill Eric Garner by chokehold, charge: selling loose cigarettes |
| 1922 - Police Shoot Negro Alleged to Be a Chicken Thief | 2014 - Police shot and killed Michael Brown, charge: jaywalking |
| 1934 - Police shot and killed Oscar Riley when he failed to raise his hands | 2015 - Police fatally injure Freddie Gray, charge: carrying a knife |
| 1906 - Tom Jackson was lynched for stealing a dollar | 2020 - Police kill George Floyd with knee to neck, charge: \$20 counterfeit |
| 1896 - Chief of Police shot and killed George Harris when he resisted arrest | 1991 - Police brutally beat Rodney King, charge: speeding |
| 1918 - Deputy Sheriff Kills Negro | 2016 - Police shot and killed Philando Castile, charge: expired tag |
| 1911 - Police Helped to Lynch Negro | 2016 - Police shot and killed Alton Sterling, charge: selling CDs |
| 1922 - Police Brutality Leads to the death of 18-year-old Herbert Dent | 2019 - Police chokehold led to death of Elijah McClain, charge: looking suspicious |
| 1931 - Sheriff shot and killed Mercer Stewart for allegedly stealing a turkey | 2020 - Police shot and killed Rayshard Brooks, charge: sleeping in car |

What makes the racial disparities in Black arrest rates even more alarming is that Blacks make up a small percentage of the population; and only 13% of the overall US population.

In many states Black arrest rates for misdemeanors are 10 times that of Whites

Jaywalking

- In Urbana, Illinois: 91% of those ticketed for jaywalking were Black, where just 16% of residents are Black
- In Sacramento, California: 50% of those ticketed for Jaywalking were Black, where the population is just 15% Black
- In Ferguson, Missouri: 95% of Jaywalking tickets are issued to Black people where the population is 67% Black

Traffic Incidents

- Blacks are 2 1/2 times more likely to be searched during a traffic stop than White drivers
- In Los Angeles, 24% of Black drivers and passengers were searched, compared with 5% of Whites
- In Cincinnati, Black drivers are 30% more likely to be pulled over than White and are 76% of arrests following a traffic stop despite being 43% of the city's population

Other Misdemeanor Stats

- Minneapolis population is 19% Black people but 58% of the city's police use-of-force incidents
- Black youth are arrested for loitering 269% more than Whites
- In New York, cops issued 99% of jaywalking tickets to Black and Hispanic people in the first quarter of 2020
- Black people charged with a misdemeanor are 75% more likely to be locked up

COVID-19



With the Covid-19 outbreak of 2020, the misdemeanor criminal system became much more than a matter of those breaking the law being treated egregiously. About 200,000 people cycle in and out of U.S. jails every week, which spreads an additional 430,000 cases of Covid-19 among the detained, jail workers and surrounding communities.

In a time where infectious disease experts require us to keep 6-feet apart and the average cell is only 3-feet wide, and shared by multiple inmates, it is no wonder that infections in jail spread 9-times more than in the general population.

The nation's top clusters of cases have consistently been found in correctional facilities

Those who work in the courts and jails, are showing infections 2-times that of inmates, and they are going to work everyday and going home to their families and communities everyday. These are essential workers you never hear about because of where they work.

When on any given day, 70% of the approximately 740,000 people in jail are there because they could not afford bail and have not been convicted of any crime, it is a distinct possibility that they could contract the virus and die simply for being poor.

In 98% of the largest US cities, crime rates fell even as fewer arrests were made and jail numbers were reduced because of the pandemic. This points to the core issue of our enormous misdemeanor problem; these people should have never been locked up to begin with.

JAIL POPULATION DECREASES DUE TO COVID

- Hennepin County MN cut by 44%
- Los Angeles county 30%
- Virginia adult Detention center 20%
- Charles County MD 30%
- Duval Cty FL 16%
- Washington Cty OR 50%
- Maricopa Cty AZ 30%
- Andersen Cty TN over 30%
- Orange Cty FL 300 people held in pre-trial
- Phila. PA 17%
- Las Vegas 100 people
- Denver 41%
- Morgan Cty AL 16%
- Franklin Cty OH over 30%
- San Diego - 300 people
- Bucks Cty PA 30%
- San Mateo - 382 people from 2 jails
- Dallas Cty - 1000 people
- Washington DC over 21%
- Cumberland Cty Maine 25%
- Massachusetts - 300 people
- Multnomah Cty OR 30%
- Riker's Island - Bronx - 526 people
- Valhalla NY - 65 people
- Dekalb Cty GA - 100 people
- Stanislaus Cty - 25%
- Mobile AL - 480 people
- Wayne Cty Detroit - 400 people
- Boulder Cty - 100 people
- Marin Cty - 40 people
- West VA - 600 people
- Allegheny Cty 545 people
- New Jersey - 1000 people
- Salt Lake City - 190 people
- Coconino Cty AZ - 50 people
- Greenville, SC - 7%
- Hillsborough Cty FL - 160 people
- Travis Cty TX - 50%

VOICES HIGHLIGHTED IN THE FILM



Faylita Hicks

Faylita Hicks was arrested after the car in which she was living broke down. The police discovered there was a warrant for a bounced check at a Texas grocery store, worth \$25. Because she was homeless, she never received the notice to appear in court. Unable to cover bail, she spent 45 days in jail. Since her release, she has been dedicated to changing the system.



Fernando Martinez

Fernando Martinez's first traffic stop at the age of 19 became an endless cycle of fees and license suspensions that would cost him almost \$20,000 during a period that would go on for over 10 years. Fernando is a board member of the Texas Fair Defense Project and has helped pass legislation that limits license suspension.



Christopher Evans

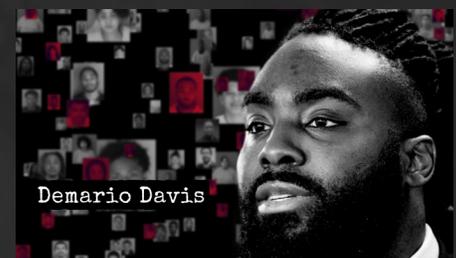
Christopher Evans shared his story from his jail cell during the height of the Covid-19 pandemic. He was arrested on a petty theft charge for an item worth less than \$100 and during his 100-day incarceration he witnessed guards and inmates dying from Covid-19.

Michael Robinson put in a call for an ambulance that was not responded to, so Michael set out on his own and was pulled over a block from his Joliet home and charged with a DUI then was sent home with an ankle monitor. He is still battling the physical and financial effects of the charge while waiting over 2 years for a trial.



Michael Robinson

Demario Davis was raised by a single mom and the only way he could get to college was on a football scholarship. He and a college roommate were caught taking food from a Walmart and arrested, their bail was set at \$10,000. If it weren't for his coach he would have not gotten out and his life would be very different. He uses his standing in the NFL to work with the Players' Coalition efforts on criminal justice.



Demario Davis

Chris Lollie was waiting to pick up his children from daycare in St. Paul, Minnesota when he was violently arrested. The egregious charges brought against him became the subject of a lawsuit that was decided in his favor. He is an advocate for change and youth. Chris is a loving father of 4 children, lyricist, youth advocate and an activist for civil liberties and rights for all Americans.



Chris Lollie

Brad Haggard was arrested for possession of a small amount of marijuana before many states adopted a more lenient stance. His arrest created a snowball effect where he lost his job and home and had to live in his car with his children. He has been dedicated to making sure others do not suffer the same fate. Brad currently works at the Harris County Public Defender's Office as an Assistant Public Defender.



Bradley Haggard

VOICES HIGHLIGHTED IN THE FILM



Alexandra Natapoff
Lee S. Kreindler Professor of Law
Harvard Law School

An award-winning legal scholar and criminal justice expert. She writes about criminal courts, public defense, wrongful convictions, and race and inequality in the criminal system. Her book, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (Basic Books), is the inspiration for the film.



Douglas Blackmon
Professor of Practice in Georgia
State University's Creative Media
Industries Institute

The Pulitzer-Prize winning author of, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, and co-executive producer of the acclaimed PBS documentary of the same name. Blackmon has written extensively over the past 25-years about the American quandary of race in America.



Khalil Gibran Muhammad –
Professor of History, Race & Public
Policy Harvard Kennedy School

Author of, *The Condemnation of Blackness, Race, Crime, and the Making of Modern Urban America*. At the forefront of scholarship on the link between race and crime in the USA for African Americans. His second book, *Disappearing Acts: The End of White Criminality in the Age of Jim Crow*, traces the historical roots of the changing demographics of crime and punishment so evident today.



Gaye Theresa Johnson
Associate Professor, Chicano Studies
and African American Studies, UCLA

A writer and teacher on race, cultural politics, and freedom struggles. She is the author of two books: *Spaces of Conflict, Sounds of Solidarity: Music, Race, and Spatial Entitlement*, a history of coalition building and spatial struggles among Black and Brown people in Los Angeles; and *Futures of Black Radicalism*, co-edited with Alex Lubin and published with Verso Press.



Irene Oritseweyinmi Joe
Professor at UC Davis
School of Law

Her research focuses on how the criminal process affects the ability of institutional attorneys to manage overwhelming caseloads and comply with ethical requirements. Prior to joining the UC Davis faculty, Professor Joe served as a fellow for the Equal Justice Initiative (Bryan Stevenson) of Alabama where she represented indigent defendants.



Paul Delano Butler
Professor at Georgetown University
Law Center

A leading criminal law scholar, particularly in the area of race and jury nullification. He is one of the nation's most frequently consulted scholars on issues of race and criminal justice. His book, *Chokehold: Policing Black Men*, was published in July 2017. Professor Butler served as a federal prosecutor with the U.S. Department of Justice.



EDUCATORS - START WITH DEFINING THE ISSUE

The first thing the filmmakers did in the creation of the documentary was to ask people on the street what they thought constituted a misdemeanor and if they thought a person could be jailed for a misdemeanor offense. Despite the fact that misdemeanor laws are different in every state municipality, the answers given were consistent; misdemeanors are no big deal but sometimes can lead to jail. Part of the problem is that misdemeanor laws vary depending on where you live, and also that there is not adequate reporting of these statistics.

1. Ask students to define the misdemeanors where they live and take that further with statistics of who is most often charged for them.
2. Ask students to research convict leasing in the post-war South and take that further to research the charges that were filed against those arrested.
3. Ask students to research their local city or county budget and see how much revenue is generated in fines and fees for minor, non-violent offenses and take that further to see where the money goes within the criminal system (such as public defenders, and pay to stay costs).

CRIMINAL JUSTICE SYSTEM PROFESSIONALS - RETHINK WHAT IS POSSIBLE

Both prosecutors and defense attorneys could benefit by asking some general questions to figure out just how little attention they pay to misdemeanors in their daily practice and how that perpetuates the racial bias in the system.

1. Do the resources your office dedicates to its misdemeanor practice differ greatly from those dedicated to felony offenses? If so, why?
2. Of the misdemeanor charges your office sees most often, how might the behavior being criminalized connect to the historical marginalization of people of color?
3. How much practice experience do the attorneys who handle misdemeanor cases have in your office?
4. What is the average caseload for the attorneys handling misdemeanors in your office?

MISDEMEANOR-SPECIFIC RESOURCES AND ORGANIZATIONS:

INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (U.S. Dep't of Justice, 2015), <https://bit.ly/34po7QF>

FINES AND FEES JUSTICE CENTER, <https://finesandfeesjusticecenter.org/>

NO DAY IN COURT: MARIJUANA POSSESSION CASES AND THE FAILURE OF THE BRONX CRIMINAL COURTS (The Bronx Defenders Office, 2013), <https://bit.ly/3r4pqye>

SUMMARY INJUSTICE: A LOOK AT CONSTITUTIONAL DEFICIENCIES IN SOUTH CAROLINA'S SUMMARY COURTS (NACDL & ACLU, 2016), <https://bit.ly/3nzdpP9>

Reflection for FAITH GROUPS



HAVE A CONVERSATION - INTERFAITH REFLECTION

We seek forgiveness for the criminal injustice system that has dishonored creation and placed profit over people. May the discomfort of this oppressive system take us beyond prayer and inspire us to break the chains of our loved ones who are incarcerated. May we be further moved to dismantle the carceral state and its connection to other systems that marginalize and suppress Black and Brown lives, the impoverished, and the mentally ill. May our work lead us to an inclusive, intersectional, restorative, and transformative justice that every individual deserves for a mutually beneficial and abundant society. May we be the instruments of this justice delayed and denied. May it be so.

Faith in Action is a national organizing network that works to dismantle systems of injustice that are fueled by hatred and racism. faithinaction.org

The Poor People's Campaign is a multi-state movement that has emerged from more than a decade of work by grassroots community and religious leaders, organizations, and movements fighting to end systemic racism, poverty, the war economy, environmental destruction, and other injustices. poorpeoplescampaign.org

Fig Tree Revolution: <http://www.figtreerevolution.com/>

Odyssey Impact's End Mass Incarceration Campaign: <http://emi.odyssey-impact.org/>

IAHR Pen Pal campaign with prisoners: https://www.interfaithactionhr.org/federal_prisons_and_isolated_confinement

1. Give yourself a moment to reflect personally. Give yourself the opportunity to process what you learned and give it the thought it deserves.
2. What does your faith tradition or practice tell you about mass incarceration? Are there stories of prophets or practitioners that have faced similar experiences in their time? If so, how did they respond?
3. What challenges have you faced when talking about justice issues in religious spaces? What do you think makes the conversation so difficult?

Justice and Activism GROUPS



Vera

INSTITUTE OF JUSTICE

vera.org

Mission: To urgently build and improve justice systems that ensure fairness, promote safety, and strengthen communities.



WORTH
RISES

worthrises.org

We envision a society in which no entity or individual relies on human caging or control for their wealth, operation, or livelihood.

BRENNAN
CENTER
FOR JUSTICE

brennancenter.org

We stand for equal justice and the rule of law. We work to craft and advance reforms that will make American democracy work, for all.

 The Marshall Project

themarshallproject.org

We are a nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system.

 Equal Justice
Initiative

eji.org

Committed to ending mass incarceration and excessive punishment in the United States, to challenging racial and economic injustice, and to protecting basic human rights for the most vulnerable people in American society.

PRISON
POLICY INITIATIVE

prisonpolicy.org

The non-profit, non-partisan Prison Policy Initiative produces cutting edge research to expose the broader harm of mass criminalization



aclu.org

For more than one hundred years, ACLU lawyers have been at the center of one history-making court case after another, participating in more Supreme Court cases than any other private organization.

ABOUT BRAVE NEW FILMS

Brave New Films champions social justice issues by using a model of media, education, and grassroots volunteer involvement that inspires, empowers, motivates and teaches civic participation and makes a difference. All of our films are free to screen with civic groups, faith communities, and in classrooms. bravenewfilms.org



"A revelatory film, directed by Robert Greenwald, exposing, with searing history and staggering facts, the invidious, disproportionate impact of minor offenses on people of color. Brave New Films creatively marshals eloquent scholars, passionate activists and fascinating historical footage to challenge us all to continue working for systemic changes to our criminal justice system."

~ Katrina vanden Heuvel, Editorial Director & Publisher, The Nation

"A powerful, emotional and important film... Robert Greenwald and Brave New Films leading the charge, once again. The film powerfully illustrates that every year America arrests, prosecutes, and jails millions of people, overwhelmingly Black and Brown, for minor offenses. This is neither an accident nor inevitable.

Watch, absorb, and then go out and take action..."

~ Anthony Romero Executive Director, American Civil Liberties Union

RACIALLY CHARGED

America's Misdemeanor Problem

MisdemeanorFilm.Org



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